

**EXHIBIT A  
TO  
ARTICLES OF AMENDMENT  
OF  
BACUS LABORATORIES, INC.**

**ARTICLE 4: CAPITAL STOCK.** The classes of stock that the Corporation is authorized to issue, and the designations, preferences, qualifications, limitations, restrictions, and special or relative rights with respect to the shares of each class, are as follows:

**A. Authorized Stock.** The Corporation is authorized to issue two classes of stock designated, respectively, "Common Stock" and "Preferred Stock." The Corporation is authorized to issue a total of 206,000 shares of all classes, consisting of 200,000 shares of common stock, no par value per share ("Common Stock"), and 6,000 shares of preferred stock, par value \$.001 per share ("Preferred Stock"). Pursuant to Section 7.40(b) of the Illinois Business Corporation Act of 1983, as amended (the "IBCA"), the holders of shares of each class and series in this Corporation shall not, under any circumstances, be entitled to cumulative voting rights in the election of directors of this Corporation. Pursuant to Section 2.10(b)(2)(v) of the IBCA, any provisions of the IBCA that require for approval of corporate action a two-thirds vote of the shareholders shall be superseded by these amended Articles of Incorporation to require the vote of the holders of a majority of the total outstanding shares, except as provided herein or in the Shareholders' Agreement described below.

**B. Common Stock.** Except as otherwise required by law, the holders of Common Stock will be entitled to one vote per share on all matters to be voted on by the Corporation's shareholders.

**C. Preferred Stock.** The following is a statement of the designations, preferences, qualifications, limitations, and restrictions in respect of the Preferred Stock.

Preferred Stock may be issued from time to time in one or more series, each of such series to have such terms as stated or expressed herein and in the resolution or resolutions providing for the issue of such series adopted by the Board of Directors of the Corporation as hereinafter provided. Any shares of Preferred Stock, which may be redeemed, purchased or acquired by the Corporation, may be reissued except as otherwise provided by law. Different series of Preferred Stock shall not be construed to constitute different classes of shares for the purposes of voting by classes unless expressly provided.

Authority is hereby expressly granted to the Board of Directors from time to time to issue the Preferred Stock in one or more series, and in connection with the creation of any such series, by resolution or resolutions providing for the issue of the shares thereof, to determine and fix such voting powers, full or limited, or no voting powers, and such designations, preferences and relative participating, optional or other special rights, and qualifications, limitations or restrictions thereof, including without limitation thereof, dividend rights, conversion rights, redemption privileges and liquidation preferences, as shall be stated and expressed in such resolutions, all to the full extent now or hereafter permitted by the IBCA. Without limiting the generality of the foregoing, the resolutions providing for issuance of any series of Preferred Stock may provide that such series shall be superior or rank equally or be junior to the Preferred Stock of any other series to the extent permitted by law. Except as otherwise provided in the Articles of Incorporation, no vote of the holders of the Preferred Stock or Common Stock shall be a prerequisite to the designation or issuance of any shares of any series of the Preferred Stock authorized by and complying with the conditions of these Articles of Incorporation.

The Series A Preferred Stock shall have the following, preferences, qualifications, limitations, and restrictions:

**Section 1. Designation and Number of Shares.** There is hereby created and established, out of the Corporation's authorized and unissued Preferred Stock, a series of Preferred Stock designated as "Series A Convertible Preferred Stock" (the "Series A Preferred Stock"). The authorized number of shares of Series A Preferred Stock shall be 6,000. The Series A Preferred Stock shall have a liquidation preference (the "Series A Liquidation Preference") in the amount of \$500.00 per share (the "Series A Stated Amount"), plus an amount equal to any dividends accrued or cumulated but not paid on the Series A Preferred Stock pursuant to Section 4 hereof, whether or not declared, to the date fixed for Liquidation (as hereinafter defined) of the Corporation.

**Section 2. Rank.** The Series A Preferred Stock shall, with respect to the right to receive dividends and distributions of assets and rights upon the Corporation's Liquidation (as defined in Section 3), rank (x) senior to the Common Stock and each other class or series of capital stock of the Corporation hereafter created which expressly ranks junior to the Series A Preferred Stock with respect to the right to receive dividends and distributions and rights upon the Corporation's Liquidation (together with the Common Shares, the "Junior Securities"), and (y) *pari passu* with all other series of Preferred Stock of the Corporation, whether now in existence or created after the date hereof, which do not expressly rank junior to the Series A Preferred Stock with respect to the right to receive dividends and distributions and rights upon the Corporation's Liquidation ("Parity Securities"). The respective definitions of Junior Securities and Parity Securities shall also include any rights or options exercisable for or convertible into any of the Junior Securities and Parity Securities, as the case may be.

### **Section 3. Liquidation Preference.**

(a) In the event of any voluntary or involuntary liquidation, dissolution or winding up of the affairs of the Corporation (a "Liquidation") each of the holders of the then outstanding shares of Series A Preferred Stock shall be entitled to be paid out of the Corporation's assets available for distribution to its shareholders an amount in cash equal to the Series A Liquidation Preference with respect to each share of Series A Preferred Stock held by such holder on the date fixed for Liquidation, before any payment or distribution of the Corporation's assets (whether capital or surplus) shall be made to or set apart for the holders of Junior Securities. If the Corporation's assets available for distribution to the holders of Series A Preferred Stock and Parity Securities shall be insufficient to permit payment in full to such holders of the sums which such holders are entitled to receive in a Liquidation, then all of the assets available for distribution to the holders of Series A Preferred Stock and Parity Securities shall be distributed among and paid to such holders ratably in proportion to the amounts that would be payable to such holders if such assets were sufficient to permit payment in full.

(b) Upon any such Liquidation, if, after the holders of Series A Preferred Stock and Parity Securities shall have been paid in full in accordance with Section 3(a) above, the net amount of liquidation proceeds available for distribution to shareholders exceeds \$15,000,000, then such liquidation proceeds shall be distributed ratably among the holders of the Junior Securities and the holders of Series A Preferred Stock (the outstanding shares of Series A Preferred Stock will be treated as if they had been fully converted into Common Stock in accordance with Section 7 hereof immediately before the Liquidation).

(c) Upon any Liquidation for which the provisions of Section 3(b) do not apply, after the holders of Series A Preferred Stock and Parity Securities shall have been paid in full in accordance with

Section 3(a) above, the remaining assets of the Corporation shall be distributed to the holders of the Junior Securities.

#### Section 4. Dividends.

(a) Each holder of Series A Preferred Stock shall be entitled to receive, out of the Corporation's funds legally available therefore, cumulative dividends, payable in accordance with this Section 4.

(b) Dividends on each outstanding share of Series A Preferred Stock (the "Series A Dividend") shall be payable at a rate per annum of 6% of the Stated Amount. The Series A Dividend shall be payable quarterly in arrears on October 31, January 31, April 30, and July 31 of each year commencing January 31, 2003 or, if any such date is not a Business Day (as hereinafter defined), on the next succeeding Business Day (each, a "Dividend Payment Date" and each such quarterly period being a "Dividend Period"). The amount of Series A Dividends payable on the Series A Preferred Stock for each full Dividend Period shall be computed by dividing the annual dividend rate by four. Series A Dividends payable on the Series A Preferred Stock for any period less than a full Dividend Period shall be computed on the actual days elapsed on the basis of a 360-day year and will be deemed to accumulate on a daily basis.

(c) All dividends paid with respect to shares of Series A Preferred Stock pursuant to this Section 4 shall be paid pro rata to the holders entitled thereto.

(d) In the event that the Board of Directors does not declare the Series A Dividend for a Dividend Period, then Series A Dividends shall accrue and be cumulative from the Original Issue Date (as hereinafter defined), whether or not the Corporation has earnings or profits, whether or not there are funds legally available for the payment of such Series A Dividends on any Dividend Payment Date or at any time during any Dividend Period and whether or not Series A Dividends are declared or paid.

(e) So long as any shares of the Series A Preferred Stock are outstanding, unless full cumulative dividends on all outstanding shares of Series A Preferred Stock for all past dividends have contemporaneously been declared and paid in full, then: (w) no dividend shall be declared or paid upon, or any sum set apart for the payment of dividends upon, any shares of Parity Securities or Junior Securities; (x) no other distribution shall be declared or made upon, or any sum set apart for the payment of distributions upon, any shares of Parity Securities or Junior Securities; (y) no shares of Parity Securities or Junior Securities shall be purchased, redeemed or otherwise acquired or retired for value by the Corporation; and (z) no monies shall be paid into or set apart or made available for a sinking or other like fund for the purchase, redemption or other acquisition or retirement for value of any shares of Parity Securities or Junior Securities by the Corporation.

#### Section 5. Voting Rights.

(a) General. The holders of the Series A Preferred Stock shall be entitled to notice of all shareholders meetings in accordance with the Corporation's bylaws, and except as otherwise provided herein or required by applicable law, the holders of the Series A Preferred Stock shall be entitled to vote on all matters submitted to the shareholders for a vote (other than the election of the Corporation's directors) voting as a single class with the Common Stock and other securities that vote with the Common Stock, with the holders of Series A Preferred Stock entitled to one vote for each share of Common Stock issuable upon conversion of the Series A Preferred Stock held as of the record date for such vote or, if no record date is specified, as of the date of such vote.

(b) Class Voting Rights. So long as any shares of Series A Preferred Stock are outstanding, the written consent or affirmative vote at a meeting called for that purpose of the holders of at least 75% of the shares of Series A Preferred Stock then outstanding, voting together as a single class, shall be required for any action that: (i) alters or changes the rights, preferences, or privileges of the Series A Preferred Stock so as to affect them adversely or reduces the percentage of shares of Series A Preferred Stock whose holders must consent to an amendment, supplement, or waiver; (ii) increases or decreases the authorized number of shares of Series A Preferred Stock by way of reclassification or otherwise; (iii) authorizes, creates, sells, increases the authorized number of shares of, or issues to any person or entity, any equity security (including any obligation or security convertible into or evidencing the right to purchase shares of any equity security) having any rights, privileges, or preferences that are *pari passu* with or superior to the rights, privileges, and preferences of the Series A Preferred Stock; (iv) approves or authorizes the Corporation's entering into and consummation of (x) a Business Combination or (y) a recapitalization, Liquidation or dissolution, unless the gross amount of consideration payable to each holder of the Series A Preferred Stock upon consummation of such transaction or event will be an amount sufficient to yield a 25% annual internal rate of return from such holder's investment in the Series A Preferred Stock; (v) results in the payment or declaration of dividends or distributions with regard to any securities of the Corporation other than the Series A Preferred Stock; (vi) approves or authorizes any increase in annual compensation in excess of \$130,000 (for calendar year 2002), as adjusted annually for inflation, payable by the Corporation to Dr. James W. Bacus or James V. Bacus; (vii) results in the redemption or repurchase of any securities of the Corporation that is not made or offered pro rata to the holders of the Series A Preferred Stock; (viii) authorizes or approves the Corporation's entering into any transactions that are not on market terms with Affiliates of the Corporation or of the Bacus Group and are not in accordance with the Corporation's Shareholders' Agreement, dated October 31, 2002; (ix) amends, alters or repeals the Corporation's certificate of incorporation or By-Laws; or (x) commits the Corporation to take any action resulting in any of the foregoing. In addition the holders of Series A Preferred Stock voting as a single class shall have the right to elect one director to the Corporation's board of directors but shall not have any other voting rights with respect to the election of any other directors. In connection with each transaction described in (iv) above with respect to which a holder of Series A Preferred Stock does not have the right to vote, the Corporation shall provide such holder of Series A Preferred Stock with written notice of all of the material terms of such transaction at least 30 days prior to the record date (or closing date if a record date is not required) established with respect to such transaction, addressed to such holder at such holder's mailing address as it appears in the stock register of the Corporation; provided, however, that such notice shall not be required if such holder of Series A Preferred Stock, in his capacity as a director of the Corporation, has received written notice of the material terms at least 45 days before the consummation of such transaction.

#### **Section 6. Redemption.**

(a) Redemptions. At any time after the seventh anniversary of the Original Issue Date, each holder of Series A Preferred Stock may request the Corporation's redemption of all or some of such holder's shares of Series A Preferred Stock by delivering written notice ("Redemption Notice") to the Corporation at least 90 days before the date of such requested redemption. The Corporation shall, upon timely receipt of a Redemption Notice from any holder of Series A Preferred Stock, be obligated to repurchase from such holder the number of shares of Series A Preferred so requested to be redeemed on the date specified in the Redemption Notice, so long as that date is at least 90 days after the date the Redemption Notice is delivered to the Corporation (each a "Redemption Date"). The Corporation shall be obligated to consummate the redemption of each such share of Series A Preferred Stock by paying to each such holder a cash price per share equal to the Series A Liquidation Preference calculated as of the Redemption Date (the "Redemption Price").

(b) Redemption Payments. For each share of Series A Preferred Stock which is to be redeemed on a particular Redemption Date in accordance with Section 6(a) hereof, the Corporation shall

be obligated on the date specified for redemption thereof in the written notice with respect thereto, to pay to the holder thereof (upon surrender by such holder at the Corporation's principal office of the certificate representing such share) an amount in immediately available funds equal to the Redemption Price. If the funds of the Corporation legally available for redemption of shares of Series A Preferred Stock on any Redemption Date are insufficient to redeem the total number of shares to be redeemed on such date, those funds which are legally available shall be used to redeem the maximum possible number of shares pro rata among the holders of the shares of Series A Preferred Stock to be redeemed based upon the aggregate Series A Liquidation Preference of such shares held by each such holder. At any time thereafter when additional funds of the Corporation are legally available for the redemption of shares, such funds shall immediately be used to redeem the balance of the shares of Series A Preferred Stock which the Corporation has become obligated to redeem on any Redemption Date but which it has not redeemed. Prior to any redemption of Series A Preferred Stock, the Corporation shall declare for payment all accrued and unpaid dividends with respect to the shares which are to be redeemed, but only to the extent of funds of the Corporation legally available for the payment of dividends.

(c) Dividends After Redemption Date. No share of Series A Preferred Stock shall be entitled to any dividends accruing after the date on which the Redemption Price of such share is paid to the holder of such share. On such date, all rights of the holder of such share shall cease, and such share shall no longer be deemed to be issued and outstanding.

(d) Redeemed or Otherwise Acquired Shares. Any shares which are redeemed or otherwise acquired by the Corporation shall be canceled and retired to authorized but unissued shares and shall not be reissued, sold or transferred.

(e) Termination of Redemption Right. The rights of the holders of the Series A Preferred Stock to be redeemed under this Section 6 shall terminate upon the closing of a Qualified Public Offering.

#### Section 7. Conversion.

(a) Each holder of Series A Preferred Stock shall have the right, at any time and from time to time after the Original Issue Date, to convert each share of Series A Preferred Stock into such number of shares of duly authorized, validly issued, fully paid and nonassessable shares of Common Stock as is determined by dividing (x) the Series A Stated Amount by (y) the initial conversion price of \$500.00 per share, subject to adjustment pursuant to Section 9 hereof (as so adjusted, the "Conversion Price"). Such conversion right shall be exercised by the surrender of certificate(s) representing the Series A Preferred Stock to be converted to the Corporation at any time during usual business hours at its principal place of business (or such other office or agency of the Corporation as the Corporation may designate by notice in writing to the holders of Series A Preferred Stock), accompanied by written notice that the holder elects to convert such Series A Preferred Stock and specifying the number of shares the holder wishes to convert, the name or names (with address) in which a certificate or certificates for Common Stock are to be issued, and if the shares issuable upon conversion are to be issued in a name different from the name in which such shares of Series A Preferred Stock are registered, by a written instrument or instruments of transfer in form reasonably satisfactory to the Corporation duly executed by the holder or its duly authorized legal representative, and by transfer tax stamps or funds therefor, if required pursuant to Section 7(e) hereof. All certificates representing Series A Preferred Stock surrendered for conversion shall be delivered to the Corporation for cancellation and canceled by it.

(b) Notwithstanding anything herein to the contrary, all shares of the Series A Preferred Stock shall automatically be converted, at the Conversion Price then in effect, upon the occurrence of a Qualified Public Offering.

(c) Each conversion shall be deemed to have been effected immediately prior to the close of business on the date on which the certificates for shares of Series A Preferred Stock shall have been surrendered and such notice received by the Corporation as aforesaid, and the person in whose name or names any certificate or certificates for shares of Common Stock shall be issuable upon such conversion shall be deemed to have become the holder of record of the shares of Common Stock represented thereby at such time on such date and each share of Series A Preferred Stock shall be converted into such number of shares of Common Stock as is determined by dividing (x) the Series A Stated Amount by (y) the Conversion Price in effect at such time on such date. All shares of Common Stock delivered upon conversion of the Series A Preferred Stock will upon delivery be validly issued and fully paid and nonassessable, free of all liens and charges created by the Corporation and not subject to any preemptive rights.

(i) Upon the surrender of certificates representing shares of Series A Preferred Stock, such shares shall no longer be deemed to be outstanding and all rights of a holder with respect to such shares surrendered for conversion shall immediately terminate, except the right to receive the Common Stock and other amounts payable pursuant to this Section 7(c).

(ii) From the date of delivery by a holder of shares of Series A Preferred Stock of such notice of election to convert, in lieu of dividends on such Series A Preferred Stock pursuant to Section 4, such Series A Preferred Stock shall participate ratably with the holders of shares of Common Stock in all dividends on the Common Stock for which the record date is fixed on or before the date of such delivery as if such shares of Series A Preferred Stock had been converted to shares of Common Stock at the time of such delivery.

(iii) As soon as possible after a conversion has been effected (but in any event within five (5) Business Days), the Corporation shall deliver to the converting holder a cash payment in an amount equal to all accrued and unpaid dividends with respect to each share of Series A Preferred Stock converted, along with a certificate or certificates for the number of whole shares of Common Stock issuable upon conversion of such share or shares of Series A Preferred Stock.

(d) The Corporation shall at all times reserve and keep available out of its authorized and unissued shares of Common Stock solely for issuance upon any conversion as herein provided, free from any preemptive rights, such number of shares of Common Stock to permit the conversion of the Series A Preferred Stock in full.

(e) The issuance or delivery of certificates for Common Stock upon the conversion of the Series A Preferred Stock shall be made without charge to the converting holder of Series A Preferred Stock for such certificates or for any tax in respect of the issuance or delivery of such certificates or the securities represented thereby (which taxes shall be paid by the Corporation, except as otherwise provided by this Section 7(e)), and such certificates shall be issued or delivered in the respective names of, or (subject to compliance with the applicable provisions of federal and state securities laws) in such names as may be directed by, the holders of Series A Preferred Stock converted; provided, however, that the Corporation shall not be required to pay any tax which may be payable in respect of any transfer involved in the issuance and delivery of any such certificate in a name other than that of the holder of Series A Preferred Stock converted, and the Corporation shall not be required to issue or deliver such certificate unless or until the Person or Persons requesting the issuance or delivery thereof shall have paid to the Corporation the amount of such tax or shall have established to the reasonable satisfaction of the Corporation that such tax has been paid.

(f) No fractional shares shall be issued upon conversion of Series A Preferred Stock into Common Stock and no payment or adjustment shall be made upon any conversion on account of any cash dividends on the Common Stock issued upon such conversion. In case the number of shares of Series A

Preferred Stock represented by the certificate or certificates surrendered pursuant to Section 7 exceeds the number of shares converted, the Corporation shall, upon such conversion, execute and deliver to the holder, at the expense of the Corporation, a new certificate or certificates for the number of shares of Series A Preferred Stock represented by the certificate or certificates surrendered which are not to be converted. If any fractional share of Common Stock would, except for the provisions of the first sentence of this paragraph, be delivered upon such conversion, the Corporation, in lieu of delivering such fractional share, shall pay to the holder surrendering the Series A Preferred Stock for conversion an amount in cash equal to the current market price of such fractional share as determined in good faith by the Board of Directors of the Corporation. The determination as to whether or not any fractional shares are issuable shall be based upon the aggregate number of shares of Series A Preferred Stock being converted at any one time by any holder thereof, not upon each share of Series A Preferred Stock being converted.

#### **Section 8. Business Combinations.**

(a) At least 30 days before the date fixed for the consummation of a Business Combination (the "Business Combination Date"), a written notice (the "Business Combination Notice") of such Business Combination shall be mailed by first-class mail, postage prepaid, to each holder of record of shares of Series A Preferred Stock addressed to such holder at such holder's mailing address as it appears in the stock register of the Corporation. Each such Business Combination Notice shall contain all instructions and materials necessary to enable such holder of Series A Preferred Stock to submit such holder's shares pursuant to the Business Combination and shall state:

(i) the parties to the Business Combination and the terms and timing of the Business Combination;

(ii) the aggregate and per share amount of all cash, securities or other property to be paid pursuant to such Business Combination (x) to holders of Common Stock and (y) to holders of the outstanding shares of Series A Preferred Stock;

(iii) that holders of Series A Preferred Stock will be required to surrender the certificate or certificates representing such shares, together with an appropriate form letter of transmittal to be mailed to the holders with such Business Combination Notice, to the Corporation at the address specified in the Business Combination Notice prior to the close of business on the day specified in the Business Combination Notice; and

(iv) such other information as the Corporation, in its sole discretion, deems appropriate.

(b) Promptly upon any such request following the delivery of a Business Combination Notice, the Corporation shall furnish to each holder of record of shares of Series A Preferred Stock, copies of any and all information regarding the applicable Business Combination and the parties thereto, in each case as may be reasonably requested by any such holder in order to allow such holder to evaluate the same.

(c) In the event of a change in the parties to, or any material change in the terms or the timing of, any Business Combination, the Corporation shall promptly give the holders of the Series A Preferred Stock written notice in accordance with Section 8(b) hereof describing such change, but in any event, at least ten (10) Business Days prior to the consummation of the Business Combination.

(d) If any Business Combination shall be effected in such a way that holders of Common Stock shall be entitled to receive stock, securities or assets with respect to or in exchange for Common Stock, then, as a condition of such reorganization or reclassification, lawful and adequate provisions shall be made whereby each holder of a share or shares of Series A Preferred Stock shall thereupon have the

right to receive, upon the basis and upon the terms and conditions specified herein and in lieu of the shares of Common Stock immediately theretofore receivable upon the conversion of such share or shares of Series A Preferred Stock, such shares of stock, securities or assets as may be issued or payable with respect to or in exchange for a number of outstanding shares of such Common Stock equal to the number of shares of such Common Stock immediately theretofore receivable upon such conversion had such reorganization or reclassification not taken place, and in any such case appropriate provisions shall be made with respect to the rights and interests of such holder to the end that the provisions hereof (including without limitation provisions for adjustments of the Conversion Price) shall thereafter be applicable, as nearly as may be, in relation to any shares of stock, securities or assets thereafter deliverable upon the exercise of such conversion rights.

(e) Each holder of Series A Preferred Stock shall have the right, but not the obligation, at any time following the date of delivery of a Business Combination Notice but before the Business Combination Date, to convert pursuant to Section 7 hereof some or all of the Series A Preferred Stock held by such holder by delivering written notice thereof in accordance with Section 7(a) hereof. If such conversion right is exercised before the Business Combination Date, the shares specified in such conversion notice shall be converted in accordance with Section 7 and shall not be treated in accordance with Section 8(d).

#### Section 9. Antidilution Adjustments.

(a) Distribution, Subdivision, Combination or Reclassification of Common Stock. If the Corporation shall at any time or from time to time, prior to conversion of all of the Series A Preferred Stock, (i) make a distribution (other than a distribution made to holders of Series A Preferred Stock) on the outstanding Common Stock payable in any Capital Stock or other securities of the Corporation, (ii) subdivide the outstanding Common Stock into a larger number of shares, (iii) combine the outstanding Common Stock into a smaller number of shares or (iv) issue any shares of Capital Stock in a reclassification of the Common Stock (other than any such event (x) for which an adjustment is made pursuant to another provision of this Section 9 or (y) that is a Business Combination subject to Section 3 hereof), then, and in each such case, the Conversion Price then in effect shall be adjusted (and any other appropriate actions shall be taken by the Corporation) so that the holder of any Series A Preferred Stock thereafter surrendered for conversion shall be entitled to receive upon conversion the number of shares of Common Stock or other securities of the Corporation that such holder would have owned or would have been entitled to receive upon or by reason of any of the events described above, had such shares of Series A Preferred Stock been converted immediately prior to, as applicable, the date of, or the record date for, such event. An adjustment made pursuant to this Section 9 shall become effective retroactively to the close of business on the day upon which such action described in the immediately preceding clauses (i) through (iv) became effective.

(b) Certain Distributions. In case the Corporation shall at any time or from time to time, prior to conversion of all of the Series A Preferred Stock, distribute to any holder of Common Stock in its capacity as such (including any such distribution made in connection with a merger or consolidation in which the Corporation is the resulting or surviving Person and the Common Stock is not changed or exchanged) cash, evidences of indebtedness of the Corporation or another issuer, securities of the Corporation or another issuer or other assets (excluding (i) distributions paid or made to holders of Series A Preferred Stock, or in which holders of such shares participate equally with holders of Common Stock, (ii) distributions payable in Common Stock for which adjustment is made under another provision of this Section 9, (iii) distributions in connection with an Excluded Transaction, or (iv) distributions in connection with a Business Combination in respect of which the provisions of Section 3 are applicable), then, and in each such case, (x) the Conversion Price then in effect shall be adjusted (and any other appropriate actions shall be taken by the Corporation) so that the holder of any Series A Preferred Stock thereafter surrendered for conversion shall in addition to the consideration provided for in Section 7



hereof, be entitled to receive upon conversion cash, evidences of indebtedness, securities or other assets that such holder would have owned or would have been entitled to receive upon or by reason of any of the events described above, had such Series A Preferred Stock been converted immediately prior to, as applicable, the date of, or the record date for, such event and (y) other than pursuant to (x) above, the powers, preferences and special rights of the Series A Preferred Stock shall not be amended or altered (whether by merger or otherwise) as a result of any of the events described above. An adjustment made pursuant to this Section 9(b) shall become effective retroactively to the close of business on the day upon which such action became effective.

(c) Adjustments for Dilutive Issuances. In addition to the adjustments of the Conversion Price provided above, upon the issuance or deemed issuance (pursuant to Section 9(c)(i) below) of Additional Common Stock at a price per share that is less than the Conversion Price of such Series A Preferred Stock in effect on the date of, and immediately prior to, such issuance or deemed issuance, the Conversion Price of the Series A Preferred Stock shall be subject to further adjustment from time to time as follows:

(i) Deemed Issue of Additional Common Stock. In the event that the Corporation at any time or from time to time after the Original Issue Date shall issue any Options or Convertible Securities, other than issuances of Options or Convertible Securities pursuant to an Excluded Transaction, then the maximum number of shares of Common Stock (as set forth in the instrument relating thereto without regard to any provisions contained therein designed to protect against dilution) (x) issuable upon the exercise of such Options or (y) in the case of Convertible Securities, issuable upon the conversion or exchange of such Convertible Securities, shall be deemed to be Additional Common Stock issued as of the time of such issue or, in case such a record date shall have been fixed, as of the close of business on such record date. In any such case in which Additional Common Stock is deemed to be issued:

a. no further adjustments to the Conversion Price of Series A Preferred Stock shall be made upon the subsequent issue of Convertible Securities or Common Stock upon the exercise of such Options or conversion or exchange of such Convertible Securities;

b. if such Options or Convertible Securities by their terms provide, with the passage of time or otherwise, for any increase or decrease in the consideration payable to the Corporation, or decrease or increase in the number of shares of Common Stock issuable by the Corporation, upon the exercise, conversion or exchange thereof, the Conversion Price computed upon the original issue thereof or upon the occurrence of a record date with respect thereto, and any subsequent adjustments based thereon, shall, upon any such increase or decrease becoming effective, be recomputed to reflect such increase or decrease;

c. upon the expiration of any such Options or any rights of conversion or exchange under any such Convertible Securities which shall not have been exercised, the Conversion Price computed upon the original issue thereof or upon the occurrence of a record date with respect thereto, and any subsequent adjustments based thereon, shall, upon such expiration, be recomputed as if:

(i) in the case of Convertible Securities or Options for Common Stock, the only Additional Common Stock issued was the Common Stock, if any, actually issued upon the exercise of such Options or the conversion or exchange of such Convertible Securities, and the consideration received therefor was the consideration actually received by the Corporation for the issue of all such

Options, whether or not exercised, plus the additional consideration actually received by the Corporation (determined pursuant to Section 9(c)(iii)) upon such exercise, or for the issue of all such Convertible Securities, whether or not converted or exchanged, plus the additional consideration, if any, actually received by the Corporation upon such conversion or exchange; and

(ii) in the case of Options for Convertible Securities, only the Convertible Securities, if any, actually issued upon the exercise thereof were issued at the time of issue of such Options, and the consideration received by the Corporation for the Additional Common Stock deemed to have been then issued was the consideration actually received by the Corporation for the issue of all such Options, whether or not exercised, plus the consideration deemed to have been received by the Corporation (determined pursuant to Section 9(c)(iii)) upon the issue of the Convertible Securities with respect to which such Options were actually exercised;

d. no readjustment pursuant to Section 9(c)(i)c.(i) or (ii) above shall have the effect of increasing the Conversion Price to an amount which exceeds the Conversion Price existing immediately prior to the original adjustment with respect to the issuance of such Options or Convertible Securities, as adjusted for any Additional Common Stock issued (or pursuant to Section 9(c), deemed to be issued) between such original adjustment date and such readjustment date; and

e. in the case of any Option or Convertible Security with respect to which the maximum number of shares of Common Stock issuable upon exercise or conversion or exchange thereof is not determinable, no adjustment to the Conversion Price shall be made until such number becomes determinable.

(ii) Issue of Additional Common Stock. If the Corporation shall at any time or from time to time issue or sell Additional Common Stock (including Additional Common Stock deemed to be issued pursuant to Section 9(c)(i)) without consideration or for a consideration per share less than the Conversion Price in effect immediately prior to such issuance or deemed issuance or sale, then and in such event, the Conversion Price shall be reduced, concurrently with such issuance or deemed issuance or sale, to a price equal to the lowest total amount of consideration per share received for such Additional Common Stock upon such issuance.

(iii) Determination of Consideration. For purposes of this Section 9(c), the consideration received by the Corporation for any Additional Common Stock issued shall be computed as follows:

a. Cash and Property. Such consideration shall:

(i) insofar as it consists of cash, be computed as the aggregate amount of cash received by the Corporation, excluding amounts paid or payable for accrued interest or accrued dividends;

(ii) insofar as it consists of securities and the value of such securities is not determinable by reference to a separate agreement, (i) if the securities are then traded on a national securities exchange or the NASDAQ Stock Market (or a similar national quotation system), then the value shall be computed based on the average of the closing prices of the securities on such exchange or system over the thirty (30) day period ending on the date of receipt of the securities by the Corporation, (ii) if the securities are actively traded over-the-counter, then the

value shall be computed based on the average of the closing bid prices over the thirty (30) day period ending on the date of receipt of the securities by the Corporation, and (iii) if there is no active public market, then the value shall be computed based on the fair market value thereof on the date of receipt of the securities by the Corporation, as determined in good faith by the Board of Directors;

(iii) insofar as it consists of property other than cash and securities, be computed at the fair market value thereof at the time of such issuance, as determined in good faith by the Board of Directors; and

(iv) in the event Additional Common Stock is issued together with other securities or other assets of the Corporation for consideration which covers both, be the proportion of such consideration so received for the issue of Additional Common Stock, determined as provided in clauses (i), (ii) and (iii) above in good faith by the Board of Directors.

b. Options and Convertible Securities. The consideration per share received by the Corporation for Additional Common Stock deemed to have been issued pursuant to Section 9(c)(i) (relating to Options and Convertible Securities) shall be determined by dividing:

(i) the total amount, if any, received or receivable by the Corporation as consideration for the issue of such Options or Convertible Securities, plus the minimum aggregate amount of additional consideration (as set forth in the instruments relating thereto, without regard to any provision contained therein designed to protect against dilution) payable to the Corporation upon the exercise of such Options or the conversion or exchange of such Convertible Securities, or in the case of Options for Convertible Securities, the exercise of such Options for Convertible Securities and the conversion or exchange of such Convertible Securities, by

(ii) the maximum number of shares of Common Stock (as set forth in the instruments relating thereto, without regard to any provision contained therein designed to protect against dilution) issuable upon the exercise of such Options (and in the case of Options exercisable for other Options, the subsequent conversion thereof in Common Stock) or conversion or exchange of such Convertible Securities.

(d) Other Changes. In case the Corporation at any time or from time to time, prior to the conversion of all of the Convertible Series A Shares, shall take any action affecting its Common Stock similar to or having an effect similar to any of the actions described in Section 9(a), (b) or (c) hereof (but not including any action described in any such Section) and the Board of Directors in good faith determines that it would be equitable in the circumstances to adjust the Conversion Price as a result of such action, then in each such case, the Conversion Price shall be adjusted in such manner and at such time as the Board of Directors in good faith determines would be equitable in the circumstances (such determination to be evidenced in a resolution, a certified copy of which shall be mailed to the holders of the Series A Preferred Stock).

(e) Reservation of Shares Issuable Upon Conversion. The Corporation shall at all times reserve and keep available, free from preemptive rights out of its authorized and unissued stock, solely for the purpose of effecting the conversion of the Series A Preferred Stock, such number of shares of its Common Stock as shall from time to time be sufficient to effect the conversion of all shares of Series A

Preferred Stock from time to time outstanding. The Corporation shall from time to time, in accordance with the laws of the State of Illinois, in good faith and as expeditiously as possible endeavor to cause the authorized number of shares of Common Stock to be increased if at any time the number of shares of authorized and unissued Common Stock shall not be sufficient to permit the conversion of all the then outstanding shares of Series A Preferred Stock.

(f) Whenever one or more adjustments to the Conversion Price are required by the provisions of this Section 9, the Corporation shall forthwith place on file with the Secretary of the Corporation, a statement stating the adjustment (provided that any failure so to file any such statement shall in no way affect the validity of any such adjustment or the requirement therefor). Such statement shall set forth in reasonable detail such facts as shall be necessary to show the reason and the manner of computing each such adjustment. Promptly after each adjustment, the Corporation shall mail, by first-class mail, postage prepaid, a notice thereof to each holder of Series A Preferred Stock together with a certificate from the Corporation's independent public accountants containing a brief description of the transaction causing such adjustment, the manner of computing such adjustment, and the resulting number of shares of Common Stock issuable upon conversion.

**Section 10. Certain Definitions.** For purposes of this Certificate, the following terms shall have the meanings set forth below:

"Additional Common Stock" shall mean all shares of Common Stock issued (or, pursuant to Section 9(c)(i), deemed to be issued) by the Corporation after the Original Issue Date, other than shares of Common Stock issued (or, pursuant to Section 9(c)(i), deemed to be issued):

- (a) upon conversion of shares of Series A Preferred Stock;
- (b) pursuant to an Excluded Transaction;
- (c) as a dividend or other distribution in connection with which an adjustment to the Conversion Price is made pursuant to Sections 9(a), (b) or (d); or
- (d) in a Business Combination approved by the Board of Directors and conducted in compliance with Section 8 hereof.

"Affiliate" means, when used with reference to any Person, (a) any Person who owns, directly or indirectly, 10% or more of the equity or other ownership interests of such Person or (b) any Person directly or indirectly controlling, controlled by, or under direct or indirect common control with that Person. For the purposes of this definition, "control," when used with respect to any specified Person, means the power, directly or indirectly, either (i) to vote ten percent (10%) or more of the Voting Stock of such Person or (ii) to direct or cause the direction of the management or policies of such Person whether through the ownership of Voting Stock, by contract or otherwise, and the terms "controlling" and "controlled" have meanings correlative to the foregoing.

"Board of Directors" shall mean the Corporation's Board of Directors.

"Bacus Group" shall mean any Group consisting of at least one of James W. Bacus or James Vincent Bacus.

"Business Combination" means the occurrence of any of the following events: (a) any Person or Group is or becomes the beneficial owner (as defined in Rule 13d-3 and Rule 13d-5 of the Exchange Act), directly or indirectly, of more than 50% of the total Voting Stock of the Corporation, other than the Bacus Group; or (b) the Corporation sells, assigns, conveys, transfers, leases or otherwise disposes of all or substantially all of (i) its assets or (ii) intellectual property rights to any Person or Group (other than by

way of merger or consolidation); (c) any transaction or series of related transactions if, immediately following such transaction or series of related transactions the holders of the Capital Stock outstanding immediately prior to such transaction or series of related transactions own 50% or less of the outstanding Voting Stock of the surviving or transferee corporation (and its ultimate parent corporation); or (d) any other transaction (including, without limitation, any merger, consolidation, reorganization, conversion or share exchange) in which (i) the Corporation changes its form of organization or domicile to a state other than Illinois or Delaware, or (ii) otherwise effects any action that would require the approval of the holders of the Series A Preferred Stock pursuant to Section 5(b).

"Business Day" means any day other than a Saturday, a Sunday, any day on which the New York Stock Exchange is closed or any other day on which banking institutions in Chicago, Illinois are authorized or required by law to be closed.

"Capital Stock" means any and all shares, interests, participations, rights in, or other equivalents (however designated and whether voting or non-voting) of a corporation, and any and all equivalent ownership interests in a Person other than a corporation, and any and all rights, warrants or options exchangeable for or convertible into any of the foregoing.

"Convertible Securities" shall mean any evidences of indebtedness, shares, or other securities convertible, either directly or indirectly, into or exchangeable for Common Stock.

"Exchange Act" means the Securities Exchange Act of 1934, as amended, or any successor statute, and the rules and regulations promulgated thereunder.

"Excluded Transaction" means any issuance of Common Stock, Options, or Convertible Securities by the Corporation after the Original Issue Date pursuant to any of the following transactions: (i) to employees or non-employee director of the Corporation pursuant to a stock option plan or other employee benefit arrangement approved by the Board of Directors; provided that the aggregate number of shares of Common Stock issuable pursuant to this clause (i) shall not exceed 460 shares of Common Stock (such number to be proportionately adjusted in the event of a stock split, a reverse stock split or other subdivision or combination of the Common Stock); or (ii) to Dr. James W. Bacus, BLISS Investors, L.P., an Illinois limited partnership, or their respective assignees in connection with any exercises of the Warrants.

"Group" means a group within the meaning of Section 13(d)(3) of the Exchange Act.

"Options" shall mean rights, options or warrants to subscribe for, purchase or otherwise acquire either Common Stock or Convertible Securities.

"Original Issue Date" shall mean the date on which the first share of Series A Preferred Stock was issued.

"Person" means any individual, partnership, corporation, limited liability company, joint venture, association, joint-stock company, trust, unincorporated organization, government or any agency or political subdivision thereof.

"Preferred Stock" means the preferred stock, par value \$0.01 per share, of the Corporation.

"Public Offering" means any offering by the Corporation of its capital stock or equity securities to the public pursuant to an effective registration statement under the Securities Act of 1933, as then in effect, or any comparable statement under any similar federal statute then in force.

**"Qualified Public Offering"** means a firmly underwritten Public Offering in which (i) the aggregate price paid for such shares by the public shall be at least \$25,000,000.

**"Voting Stock"** means, with respect to any Person, the Capital Stock of any class or kind ordinarily having the power to vote for the election of directors or other members of the governing body of such Person.

**"Warrants"** means those certain warrants that the Corporation issued on October 31, 2002, to each of Dr. James W. Bacus and BLISS Investors, L.P., an Illinois limited partnership, for the purchase of 1,000 shares and 2,338 shares, respectively, of the Corporation's Common Stock at an exercise price of \$500.00 per share, as such number of shares and such exercise price may be adjusted in accordance with the anti-dilution protections provided by the terms and conditions of the Warrants.